

ARKANSAS REGISTER

Transmittal Sheet



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Secretary of State
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Name of Agency Arkansas Real Estate Commission

Department _____

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CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance With Act 434 of 1967 As Amended.

Roy Bilheimer
SIGNATURE

Executive Secretary
TITLE

April 23, 1990
DATE

FILED
R. REGISTER DIV.
APR 25 PM 3:05
W. J. "BILL" MCCUEN
SECRETARY OF STATE
LITTLE ROCK, ARKANSAS

107. Termination of affiliation - Transfer of license.

(a) When any real estate salesperson, Associate Broker or Executive Broker shall be discharged or shall terminate affiliation with the real estate Principal Broker or Executive Broker, such Principal Broker or Executive Broker shall notify the Commission of such discharge or termination and return to the Commission the license and pocket card of the terminated Broker or salesperson. Such notification shall automatically inactivate the license.

Failure of the Principal Broker or Executive Broker to so notify the Commission of such discharge or termination shall be cause for the suspension or revocation of his/her broker's license.

(b) A broker or salesperson terminated under subsection (a) above may transfer his/her license to another firm, after his/her license and pocket card have been returned to the Commission, by filing with the Commission a transfer application signed by the new Principal Broker or Executive Broker. Such transfer application must be accompanied by (1) a statement that he/she is not taking any listings, management contracts, appraisals, lease agreements, or copies of any such documents, or any other pertinent information belonging to his former Principal Broker or Executive Broker, and (2) a transfer fee. At the time the transfer application and the two accompanying items are filed, the Commission may issue a temporary interim license.

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AR. REGISTER DIV.
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W. J. "BILL" JOHNSON
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BY _____

**116. Salesperson dealing independently -
Disciplinary proceedings.**

If a Principal Broker or Executive Broker learns a salesperson, Associate Broker or Executive Broker licensed under him/her has, without his/her permission, engaged in real estate activities independently or through some other broker, it is his/her duty to immediately notify the Commission in writing and forward such licensee's license and pocket card to the Commission. The Commission may initiate disciplinary proceedings against the licensee under A.C.A. § 17-35-309 (5), (6), (8), (10), and/or any other sections of the license law or regulations which may have been violated.

120. Regular meetings of Commission.

Regular meetings of the Arkansas Real Estate Commission shall generally be held on the Monday immediately preceding the second Tuesday of each month, and will continue in session until its business is completed insofar as is possible; provided, however, that any regular meeting of the Commission may be set forward, postponed, cancelled or adjourned to another day.

123. Appearance before Commission.

Any person desiring to appear before the Commission at any of its regular meetings, to take up any business within the jurisdiction of the Commission shall, at least 15 days prior to such meeting, file with the Secretary a written request therefor, in which the nature and purpose of the appearance shall be clearly and concisely stated with sufficient details to fully apprise the Commission of the basis and extent of such business. Provided, however, that a person may not appear before the Commission in connection with any matter pending before the Commission for administrative adjudication except upon notice and opportunity for all parties to participate.

127. Complaints - Procedure.

Any and every complaint which establishes reasonable cause to believe a violation of the real estate license law or Commission regulations has occurred shall be presented to and reasonably disposed of by the Commission, giving due consideration to sufficient and necessary time to investigate and consider the complaint. Any person who shall file a complaint with the Commission's Secretary, and who shall disagree with the Secretary's findings that such complaint fails to establish reasonable cause to believe a violation has occurred may, upon written request, appeal the Secretary's decision to the Commission. The Commission shall then review the written record and sustain or overrule the Secretary's decision. If the decision is sustained, the complaint shall be dismissed. If the decision is overruled, the Commission may either order a hearing or may request further investigation or documentation of the complaint. Provided, however, that a person may not appear before the Commission in connection with any matter pending before the Commission for administrative adjudication except upon notice and opportunity for all parties to participate.

133. Broker responsibilities - Instructing and supervising salespersons and brokers.

Principal Brokers and Executive Brokers have the duty and responsibility to instruct those brokers and salespersons licensed under them with regard to the fundamentals of real estate practice and the ethics of the profession, and to keep them informed and abreast of all changes and developments pertaining to the Arkansas Real Estate License Law and Commission Regulations. They shall also exercise strict supervision of the real estate activities of all those licensed under them and for whom they have supervisory responsibility.

Whether or not a Principal Broker or Executive Broker has discharged these responsibilities for those licensed under him/her will depend on various factors and circumstances, including, without limitation, the following:

1. Frequency and manner of contact and communication;
2. Type and frequency of educational and instructional activities;
3. Method and frequency of monitoring sales activities.

138. Trust account - Earnest money.

(a) Each firm shall maintain a separate trust account for all funds belonging to others. The principal broker of the firm shall be held solely responsible and accountable for any and all disbursements from the trust account. Except as authorized by subsection (f) of this regulation, the trust account shall be non-interest bearing and it shall not contain any funds belonging to the broker, firm, or any member of the firm. However, the broker may maintain a sufficient fixed amount of personal funds to insure that the bank will not charge a service or maintenance fee for the account. The name on the account should include either "trust" or "escrow" and must be located in an institution insured by either the FDIC or some other insuring agency of the federal government.

(b) With regard to each separate trust account, the principal broker shall submit to the Commission in writing the following:

1. Name and number of the account.
2. Name and address of the bank.
3. Date the account was opened.

(c) The information referred to in the immediately preceding paragraph shall be submitted to the Commission within ninety days after the effective date of this regulation, and thereafter it shall be submitted immediately upon any of the following events or occurrences:

1. Commission approval of real estate firm name.
2. Change of real estate firm name.
3. Designation of new principal broker.
4. The account is changed in any respect.

(d) Within one working day following acceptance of an offer by the seller, all earnest money funds shall be (1) deposited in the trust account, or (2) delivered to the broker's escrow agent. All other funds delivered to the broker pending performance of any act shall be, within one working day (1) deposited in the trust account, or (2) delivered to the broker's escrow agent. If the broker shall deliver funds to an escrow agent, he shall maintain an accounting of all such funds and shall keep in his file a

signed receipt from the escrow agent for such funds. Likewise, a broker shall at all times keep detailed records of all funds coming into his possession and all disbursements made by him. Such records shall be open to inspection by the investigative staff of the Commission.

(e) All security deposits made under a rental or lease agreement shall be deposited in the principal broker's trust account, including those deposits made on property owned by any broker or salesperson licensed under the principal broker unless the broker or salesperson who owns the property has a written agreement with the tenant providing that he/she may keep the security deposit in his/her separate account. A copy of any such agreement shall be furnished to the Principal Broker.

Provided, however, that the Principal Broker shall not be responsible for the failure of those licensed under him/her to comply with this subsection (e) as long as he/she is in compliance with Regulation 133.

(f) Nothing in this regulation shall be deemed to prohibit a broker from maintaining certain funds or deposits in particular transactions in an interest-bearing account when required to do so by law or valid regulation of any governmental agency, nor shall it prohibit a broker from maintaining an interest-bearing account while participating in the Interest on Real Estate Brokers' Trust Account program authorized by Act 340 of 1989.

140. Contracts and financial obligation in writing - Copies to all parties.

(a) Except as provided in subparagraph (b) below, a licensee, for the protection of the public and of all parties with whom he deals, shall see that financial obligations and commitments regarding real estate are in writing, expressing the exact agreement of the parties, and that copies of such agreements are placed in the hands of all parties involved. (Examples: Offer and acceptance contracts, closing statements, lease agreements, management agreements, etc.) If a real estate broker or salesperson shall fail to voluntarily place copies of such contracts and statements into the hands of all affected parties such action shall be deemed by the Commission to be prima facie evidence of violation of Ark. Code Ann. § 17-35-309(8) and (10).

(b) It is strongly recommended, but not required, that listing agreements be in writing.

143. Self-dealing - Full disclosure required.

Licensees shall not buy or sell property for themselves or for a corporation or partnership in which they have an interest without first making full disclosure to the buyer or seller, as the case may be, of the exact facts that they are licensed as a real estate broker or salesperson and are buying the property for their own account or have an interest in the property which they are selling. All such disclosures must be made in writing before the contract of sale is entered into.

144. Sale or management of property - No secret profits.

When acting as agent in the sale or management of property, a licensee shall not accept any commission, rebate, profit or payment from any source in connection with the property without full written disclosure to the party represented by the licensee.

147. Offer and Acceptance.

(a) Subject to the provisions of Regulation 148, any formal offer received on a specific property shall promptly be presented by the listing broker or listing salesperson to the seller for his consideration. In the event that more than one formal offer is made before the seller has accepted a proposal, all offers shall be presented to the seller for his decision.

(b) Every offer received must be signed by the salesperson or Associate Broker who receives it and by either the Principal Broker or the Executive Broker who is responsible for supervising the salesperson or Associate Broker. Every acceptance must bear the names, but not necessarily the signatures, of the salesperson, Associate Broker or Executive Broker who takes the listing and of either the Principal Broker or the supervising Executive Broker. (It is desirable for the Principal or supervising Executive Broker to review and sign each offer before it is submitted to the seller, although that is not always possible. However, the Principal or supervising Executive Broker shall review and sign the offer as soon as possible after it is received, and, in all cases, prior to closing.)

148. Exclusive listing and management contracts - No circumvention.

If a firm shall hold an exclusive listing contract on a parcel of property, all other firms shall present any offer they shall receive on that property to the firm holding the exclusive listing contract not later than the close of the next business day after the receipt of the offer. Likewise, all earnest moneys and deposits shall be forwarded to the listing firm for deposit in the listing firm's trust account. The listing firm shall then present the offer to the seller. The selling broker or salesperson may accompany the listing broker or salesperson with his/her permission, but he/she shall not contact the seller alone unless he/she shall have prior written permission from the listing broker. Under no circumstances may a broker or salesperson negotiate with a seller/owner who has an exclusive listing or management contract with another firm without prior permission from the listing/managing firm. A licensee who knowingly circumvents an exclusive listing or management contract or who negotiates directly with a seller/owner without permission will have presumptively violated Ark. Code Ann. § 17-35-309(8) and (10).

149. Signs.

Signs offering or advertising a property may be on the property only during the existence of a listing agreement, unless otherwise authorized by the owner.

152. Criminal convictions - Disciplinary actions.

(a) Conviction of, or a plea of guilty or nolo contendere to, a crime involving moral turpitude or which involves dishonesty, untruthfulness or untrustworthiness shall be deemed noncompliance with and a prima facie violation of A.C.A. § 17-35-302 and § 17-35-309 (8) and (10).

(b) A licensee convicted of any crime other than a traffic violation shall make written report thereof to the Commission within thirty (30) days after the conviction. The report shall include the date of the offense and of the conviction, the name and address of the convicting court, the specific crime for which convicted, the fine, penalty and/or other sanctions imposed, and copies of the charging document and judgment of conviction. The report shall also include the licensee's explanation of the circumstances which led to the charge and conviction, along with any other information which the licensee wishes to submit.

(c) A licensee who has a real estate broker's or salespersons's license denied, revoked or suspended shall make written report thereof to the Commission within thirty (30) days after such denial, revocation or suspension. The report shall include the date of the action, the name and address of the regulatory agency which has taken the action and copies of documents pertaining thereto. The report shall also include the licensee's explanation of the circumstances which led to the denial, revocation or suspension, along with any additional information the licensee wishes to submit.

(d) An applicant for a real estate license who has been convicted of or pleaded guilty or nolo contendere to any crime other than a traffic violation or who has had a real estate broker's or salesperson's license denied, revoked or suspended shall furnish the written report referred to in subsection (b) and/or (c) hereof to the Commission at the time his/her application is submitted if such conviction, plea, denial, suspension or revocation has already occurred; otherwise such report shall be made immediately after the conviction, plea, denial, suspension or revocation occurs.

155. Dishonored checks.

Any applicant or licensee who shall submit to the Commission a check or bank draft which is not honored by the bank shall not be eligible to take any examination, or receive any grade or license from the Commission until such time as such check is honored. The Commission in its discretion may order any such applicant or licensee to appear before it for the purpose of determining whether or not he/she has the necessary qualifications for licensure, including a good reputation for truthfulness and fair dealing and competency to act in such manner as to safeguard the interests of the public.

The Commission shall charge a fee not to exceed \$25.00 for a dishonored check or bank draft and shall also require such check or bank draft to be made good immediately by the maker. If such person shall be a real estate salesperson, Associate Broker or Executive Broker, and shall fail to make such check or bank draft good, the Commission may require such funds from the Principal Broker under whom such person is licensed.

158. Real estate closings.

It is generally the responsibility of the Principal Broker of the listing firm to ensure that the real estate closing is conducted properly and in accordance with the agreement of the buyer and seller. In those cases where the listing Principal Broker is excluded from participating in the closing, he/she must nevertheless make all reasonable efforts to fulfill this responsibility.

159. Death or incapacity of broker - Continuation of business.

Upon the death or incapacity of a principal broker or the closing of a real estate company for any reason, including bankruptcy, the Commission may in its discretion, based upon the merits and circumstances of each case, permit the real estate company to continue operating for a period of time not to exceed one hundred eighty (180) days under the supervision of a person approved by the Commission and subject to conditions prescribed by the Commission.

204. Courses offered by private or Vo-tech schools.

Courses in real estate related subjects offered by either Arkansas proprietary schools licensed by the State Board of Private Career Education, or state vocational technical schools operated by the Vocational and Technical Education Division of the Arkansas Department of Education, shall be deemed courses acceptable to the Commission under Section 5(c) of Act 453 of 1987 [Ark. Code Ann. Section 17-35-506(a) (3)], provided that the courses and instructors are first approved by the Division.